



STATE OF WASHINGTON

## STATE BUILDING CODE COUNCIL

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## MINUTES STATE BUILDING CODE COUNCIL

**Date:** June 14, 2002  
**Location:** Spokane Public Library

**Council Members Present:** Stan Price, Vice Chair; Dave Baker; Rory Calhoun; Peter De Vries; Chris Endresen; John Fulginiti; Bill Misocky; Steve Mullet; Steve Nuttall; Dave Saunders

**Council Members Absent:** Jim Lewis, Chair; Sue Alden; Rick Ford; Terry Poe; Dale Shafer

**Visitors Present:** Bob Eugene, Kraig Stevenson, Mike DeWeming, John Hogan, Tena Risley, Ed Fields, Wayne Harquess, Bill Wright, Terri Hotvedt, Brian Minnich, Larry Andrews, Dwight Perkins, John McDonald, Rich Leonhardt, Jerry Farley, Dan Sexton, Larry Stevens, Karen Dinicola, Rick Breezee

**Staff Present:** Tim Nogler, Al Rhoades, Krista Braaksma, Patti Thorn

### CALL TO ORDER

The meeting was called to order at 2:10 p.m. by Stan Price, Vice Chair. Stan welcomed everyone to the meeting. Introductions were made.

### REVIEW AND APPROVE AGENDA

The agenda was reviewed and approved as written.

### REVIEW AND APPROVE MINUTES

The minutes of the March 8 Council meeting were reviewed and approved as written.

## **INTRODUCTION OF NEW COUNCIL MEMBERS**

Stan welcomed two new Council members, Steve Mullet and Peter De Vries. Peter, a retired president of Big Bend Community College, is currently involved in designing homes. Steve, mayor of Tukwila for the past three years, was involved in home remodeling for 20 years.

Stan reviewed Council committees for the new members and invited them to choose committee assignments now or at a later meeting. Tim noted the Council chair appoints Committee members with the concurrence of other Council members. He said that Peter has expressed interest in joining the Legislative Committee and the Mechanical, Ventilation and Energy Codes Committee. Steve Mullet would like to join the Legislative Committee. Stan with Council concurrence made Peter's and Steve's appointments to those committees.

## **OVERVIEW OF COUNCIL PROCESS**

### **2002 Meeting Schedule**

Tim outlined the proposed draft meeting schedule, which calls for monthly combined committee conference calls if needed and a final Council meeting, the next after this one, in November. He pointed out there are several rulemaking issues before the Council. Thus Tim suggested Council members deliberate about the meeting schedule this afternoon and decide on a schedule before today's adjournment.

Dave Baker asked about notification requirements of meetings. Tim answered that under the Open Public Meetings Act notice must be made to the public at least 24 hours prior to meetings. Council bylaws require 72 hours' notice of "special meetings." At least one public hearing, potentially on November 8, must be held on rulemaking issues. He noted the Council has historically held two public hearings on rulemaking issues, one eastside and one westside.

Stan deferred action on the proposed draft meeting schedule until later this afternoon.

### **Budget Report**

Tim called attention to a table depicting actual and projected figures of the Council's fund from the first quarter of 1996 through the fourth quarter of 2001. He pointed out the FTE decrease from eight staff positions to the current five and the accompanying substantial reduction in quarterly expenditures. He said an additional FTE reduction may be necessary in next biennium's budget planning. Committee and Technical Advisory Group (TAG) workplans have to be considered in light of staff reductions. Tim said this points to the need for a fee increase to maintain the Council's current staff level of five. Two positions have been released, and a sixth position is reserved for technical staff. Tim then pointed

out expenditure and travel costs, both of which have been substantially reduced. He noted conference calls have been successful, despite some difficulties, in reducing travel costs.

## **COMMITTEE REPORTS**

### **Building, Fire and Plumbing (BFP) Codes Committee**

Dave Saunders, Chair of the BFP Codes Committee, said the Committee received and agreed with a report from the Adult Family Homes TAG recommending denial of a request to appeal WAC 51-40-0202 and 0310. The Committee also adopted the TAG's recommendation to request an Attorney General Opinion (AGO) asking if the current adult family home rules violate the Federal Fair Housing Act. So the Committee forwards these two items to the Council.

In addition Dave said the Committee adopted Interpretation No. 02-March 01, requested by the City of SeaTac regarding supported living services, at the request of the Adult Family Homes TAG. Finally Dave said the Committee also considered a request for emergency rulemaking on the elevator shaft pressurization issue. The Committee recommends rulemaking on this issue at the Council rather than at the Committee level.

Steve Nuttall, Chair of the Adult Family Homes TAG, capsulized TAG study of the appeal. He said the TAG received testimony from a variety of sources indicating that Washington has the authority to address adult family homes in the building code in light of fire and life/safety issues.

#### **Motion #1:**

**Bill Misocky moved the Council adopt the Committee recommendation to deny the petition and seek an informal AGO. Chris Endresen seconded the motion. Motion #1 was unanimously adopted.**

Stan said the Committee's adoption of Interpretation No. 02-March 01 stands on its own without Council action. Dave Saunders thanked the Adult Family Homes TAG for their hard work and assistance.

Stan recapped that the Committee recommends that the Council enter into permanent rulemaking on the elevator shaft pressurization issue and appoint a TAG to study the issue. Dave Saunders suggested that the Department of Labor and Industries' Elevator Section be invited to participate. He said the issue is not amenable to an interpretation, nor does it warrant emergency rulemaking. To Dave Baker's question if the study would begin immediately or be deferred until the next code cycle, Dave Saunders said it would begin immediately, since it entails amending current statute. Stan and Tim both agreed.

## **Motion #2:**

**Bill Misocky moved the Council enter into permanent rulemaking on the elevator shaft pressurization issue and appoint a TAG to study the issue. Dave Saunders seconded the motion.**

Steve Nuttall asked if an existing TAG would be used or a specialty TAG created. He believes in this case the latter is appropriate. Dave Saunders agreed. Stan reminded members that TAG membership will be discussed later at this meeting. Tim noted that committee chairs have the authority under Council bylaws to appoint TAGs. Stan said majority Council sentiment exists for the committee chair to appoint adequate, new TAG representation.

**The question was called for. Motion #2 was unanimously adopted.**

Al Rhoades asked about appointment of the Elevator Shaft Pressurization TAG chair. Stan asked Council members if anyone was interested in volunteering for chairmanship. Lacking a volunteer, chairmanship will be determined at a later date, with Dave Saunders' approval.

## **Mechanical, Ventilation and Energy (MVE) Codes Committee**

Stan, MVE Codes Committee Chair, noted that since this morning's meeting lacked a quorum of members, no formal action was taken. Stan asked Bill to synopsise meeting deliberations with Tim. Bill said the Committee received a petition to amend or repeal a portion of the Washington State Energy Code (WSEC) relative to structures over five stories in height. Tim referred to a CR-103 calling for emergency rulemaking to repeal Council amendments adopted last year to the WSEC that will become effective in July 2002. The effect of the CR-103 is to provide economic relief to multifamily residential builders or building owners by allowing current thermal envelope requirements. The petition says neither the TAG nor the Council considered buildings over five stories in height when the amendments were adopted. The design of such buildings calls for more glazing than allowed under new provisions of the WSEC. Tim said the anticipation is to enter permanent rulemaking on this issue.

Steve Nuttall asked what would happen if no action was taken by the Council before the 120-day hold of the emergency rulemaking expires. Tim answered that the amendments adopted last November would then become effective. Stan said his understanding is that if the Council is into a rulemaking process during the 120 days, in deliberation for a permanent rule, there is no expiration on Day 121. Tim noted that the Council would have to readopt the emergency rule successively until a permanent rule is in place. Steve Mullet expressed concern about leaving a window, with the potential of vesting or grandfathering in the wrong provisions. Steve Nuttall asked if there are other avenues of appeal open after the amendments become effective. Tim answered the first level of appeal is to the agency. The second level, following the effective date of amendments, is to the Governor.

Stan noted other comments received about WSEC amendments adopted by the Council last November include questionable flexibility for residential buildings and an undue burden on the City of Seattle and Seattle City Light because buildings covered by the above petition are overwhelmingly in that city. Peter asked about timing. Stan answered the emergency rule gives the Council 120 days. Tim added that rules have to sit through a legislative session. Thus the earliest date a permanent rule could take effect is April or May 2003.

Dave Baker said a number of concerns were raised during the MVE Codes Committee meeting, to be addressed by rules rather than interpretations. Stan said that a number of clarifications have been made to changes made on the nonresidential side. He has heard less concern voiced of an interpretative nature. Dave Baker noted Dale Shafer additionally had some concerns that couldn't be addressed today because Dale had a conflict and couldn't attend this meeting. Dave Saunders added that the Washington Association of Building Officials (WABO) is just now receiving comments from building officials about questions they have been receiving that they can't answer. Those have yet to come to the Council.

Steve Nuttall said he's a little concerned about entering rulemaking on code amendments that haven't yet taken effect. He said there's an established process of interpretations to answer such questions, and a flood of interpretations may signal the need for rule changes. However lots of interpretation requests on the WSEC haven't been received..

Rory Calhoun asked where the group sponsoring the petition was when WSEC changes were adopted in November 2001. He noted that requested changes seem to have a domino effect. Dave Baker noted the changes were made at the request of Governor Locke without adequate study. Dave Saunders pointed out the emergency rule solely affects buildings over five stories. All other rules will become effective in July. He wants to take advantage of opportunities to correct problems before they become institutionalized.

Steve Nuttall asked if this emergency rulemaking opens the door for TAG consideration of other rules. Tim said proposed rules must be filed for public hearing, and a permanent rule must be adopted by December 1. Steve Mullet spoke against TAGs randomly studying issues. As TAG chair Stan commented that he prefers individually studying issues. He believes last November's changes to the WSEC are positive and workable. Steve Nuttall asked for the questions to be separated.

### **Motion #3:**

**Steve Nuttall moved the Council approve the MVE Committee's recommendation to enter emergency rulemaking to amend the 20001 WSEC as relates to residential multi-unit buildings over five stories in height. Peter De Vries seconded the motion.**

### **Amendment to Motion #3:**

**Dave Baker expanded Motion #3 to adopt the CR-101 stating proposal inquiry and leading to final rulemaking. Dave Saunders seconded the motion.**

Stan restated the goal of the amendment is to expand the scope of the TAG inquiry. Dave Baker agreed. Chris Endresen spoke in support of the amendment, with the caveat that the TAG address real problems occurring now, compared to simply going back and modifying Council amendments. Dave Baker said his intent in revisiting changes made in November is clarification, for example of Chapters 4 and 5. Dave Saunders added it is not his intent to revisit energy savings targets for nonresidential.

**The question was called for on the Amendment to Motion #3. The amendment was adopted, 5 aye to 4 nay.**

Stan called for discussion of Motion #3 as amended. John Hogan spoke against including the Chapter 6 table in the rulemaking. Stan sympathized and asked if any Council member wished to offer an amendment. No one did.

**The question was called for on Motion #3. The motion was unanimously adopted.**

Stan said the MVE Codes Committee also discussed an interpretation request regarding tapes for sealing metal-to-metal connections. The Committee decided to review additional information before moving forward with an interpretation.

### **Legislative Committee**

Chris Endresen, Chair of the Legislative Committee, said that Committee had extensive discussion about submission of a letter to the Governor, involving most Council members. The fee bill was also discussed. The Committee decided to postpone reintroduction of that bill until after receiving budget information. Since that information has now been received, Chris suggested addressing the fee bill before the letter to the Governor.

### **Motion #4:**

**Dave Baker moved that the Council reintroduce the fee bill. Dave Saunders seconded the motion.**

Stan clarified that the proposed legislation will be submitted to the Governor's Office for submission to the Legislature as Governor-request legislation. Chris and Dave both agreed.

**Motion #4 was unanimously adopted.**

Chris then referred to the proposed draft letter to Governor Locke regarding updating the state building code. She said Dave Baker's motion to send last year's letter failed. The Committee recommendation was for staff to draft a new letter to the Governor, circulate it to Legislative Committee members for their preapproval, then submit it to the Governor. The letter should be one-page, one-sided, requesting the Governor's support of legislation

allowing the Council to adopt new codes. It should express the sentiments that it's very important that new codes be adopted because there are real effects, such as increased insurance rates, of not doing so. Dave Baker and Dave Saunders both agreed. Dave Saunders noted he'd like Chairman Lewis' comments about such a letter.

Stan opened the meeting up to public comment about a letter to the Governor.

### **Rick Breeze**

Rick was attending on behalf of Ray Biral of the National Fire Protection Association (NFPA). He currently serves on NFPA's Standards Council, the 5000 Technical Correlating Committee and the Certification Exam Committee for building inspectors and plans examiners. In addition he chairs NFPA's Building Code Development Committee.

Rick suggested that the Council review all possible options before them, including the 5000 Building Code. He said currently NFPA is the only organization that has a complete, ANSI-accredited family set of codes. Included are the 5000 Building Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the National Electrical Code, ANSI A117 for accessibility, FEMA flood proofing provisions, ASHRAE energy provisions. In addition two fire codes will merge in 2003 to make the first NFPA 1 Uniform Fire Code.

As a building official for the past 20 years, Rick said this is an opportunity for the state of Washington to set a good example for other states in the nation.

### **Dan Sexton**

Dan, Legislative Director for the Washington State Association of Plumbers and Pipefitters, said the letter to Governor Locke is premature. Support was lacking, he noted, last session for this bill as it's written. Thus Dan recommends delaying the letter until all parties involved can meet and reach resolution on a compromise bill.

### **Larry Stevens**

Larry, representing the Mechanical Contractors Association and the National Electrical Contractors Association, spoke against the letter to Governor Locke. He said he thinks that letter, basically "in your face," will put the Council in the same place it was in last year.

He noted that since the Council is charged with public responsibility, it's a disservice to not review all the codes that are available, including the NFPA 5000.

### **John McDonald**

John, representing the Washington State Association of Fire Marshals, said that association as well as the Washington State Association of Fire Chiefs encourages the Council to send

the letter. Following an extensive study last year, John said fire marshals recommend the International Fire Code.

Chris asked if there was no legislation updating the state building code enacted next session, how many years would that delay the process. Tim answered one year. Chris pointed out that the term “public service” includes what individual homeowners and businesses pay for insurance as well as tax increases related to insurance costs.

Steve Nuttall asked what the final date is for submitting Governor-request legislation. Tim said he’s not aware of a last date. However there has been communication to begin the process, usually the first or second week of September, early this year.

Stan said that draft language for a letter to Governor Locke was discussed at the Legislative Committee meeting. The language was shortened and abbreviated, but actual text is not available. Another issue that was raised is review of a new code set published by the NFPA. Stan called for a motion on these two issues or deferral until July.

Dave Baker said the recommendation of the Legislative Committee was to submit a new letter to the Governor following the codes outlined in HB 1555.

#### **Motion #5:**

**Dave Saunders moved that the Council adopt the Legislative Committee’s recommendation to submit a new letter to the Governor about updating the building code, modeled after HB 1555, as outlined by the Legislative Committee. Chris Endresen seconded the motion.**

Stan clarified that the letter will be circulated to the Council for majority approval before submission to the Governor. At the request of Steve Mullet amendments to the letter will be accepted, rather than a simple approval/disapproval. However the length is inflexible at one-page, one-sided. Tim noted that the intent of the letter is to support HB 1555 as proposed legislation.

Bill spoke against the motion, saying HB 1555 includes a code this Council has never reviewed. Thus he’s uncomfortable recommending the International Residential Code to the Legislature. In addition another building code, NFPA 5000, is a month away from being finalized. Bill said that code merits review. Dave Baker spoke in favor of the motion. He’s willing to stand behind the Council decision that was reached after extensive deliberation and review. Dave noted the appropriate place for resolution of the issue is the Legislature.

Steve Nuttall supported the motion despite concerns because he wants to see the letter. He’s confused why the Council is pursuing the specific path of HB 1555 now. Dissention exists. He prefers to work toward a consensus rather than initially galvanizing Council members. Dave Saunders pointed out that contemporaneous codes have to be compared.



The NFPA 5000 draft code is available earlier than predicted. The next cycle of contemporaneous codes is January 2003. However advice to the Governor is being requested before December 2002. Dave said that's the "rock and the hard place" the Council finds itself in. Steve Nuttall clarified that rather than seeking consensus on other code(s), he's interested in consensus with the code organizations.

Chris noted there were suggested changes to the bill last session. She's not adverse to amendments.

**The question was called for.**

Stan requested clarification of what happens if a majority consensus on the letter's text cannot be reached. Chris answered that no letter would then be sent. Dave Baker noted that the codes are not being changed. The motion is for the Council to recommend the codes outlined in HB 1555. Peter stated his intention to abstain, given his new membership and lack of background on the issues.

**Motion #5 was adopted, 7 aye, 1 nay and 1 abstention.**

**PUBLIC COMMENT ON ENDANGERED SPECIES ACT MODEL ORDINANCES**

Stan noted, given the lack of time, the Council cannot take deliberative action on this issue today. Tim will request a conference call in July to further address this issue.

**Willy O'Neal**

Very quickly. Many of you are new, and you haven't been involved in this process long. I actually many years ago, about eight years ago, was in Tim's seat with the State Building Code Council. I subsequently and eventually went to work for the Association of General Contractors.

A couple of years ago the Endangered Species Act rose up as something that was a concern to the construction industry. We realized there were a number of efforts going on, but no one had taken a look at the State Building Code to determine if there were things in the building code that could be done within the existing statute to allow better protection of salmon and their habitat during the construction process. So on April 19, 2000 we requested the Council consider this. We thought we were going to take about a year, and ended up taking two.

What I want to do today is just very briefly go through what we've come up with. There are three proposals in front of you for three model ordinances, one related to spill prevention, one related to erosion control, and one related to rainwater harvesting guidelines. I would note they are all for commercial construction only.

I want to make one very clear point today. We are not asking you to enter rulemaking on these. Under RCW 19.27.0(I think 80 but I'm not sure) the Council is allowed to research on any matter relating to codes. Now the request was predicated on that because we saw this as a three-part process. Essentially first go out and use the technical advisory group process to identify those best management practices that may be helpful within the bonds of building code law in order to protect salmon in their habitat. Then secondly to actually test those standards, and then report back not only to the Council but to the Legislature on that voluntary approach to see if there are something that you folks can do that would work well.

So in doing that over the last few years, we first of all conducted a thorough review of all state, federal and local codes that we could find relating to spill prevention counter measures, erosion control, specifically on the site, those controlled under the excavation/grading chapter. And then the rainwater harvesting actually came up as somewhat as an afterthought. It turned out to be something that's fairly substantial. We also took water conservation, water quality and plumbing fixtures. At that time there appears to be no additional savings that would be cost-effective. So we dropped them.

So what you have in front of you are essentially three standards. You also have some testimony. The TAG when we went through all the various standards found two standards that were sort of interesting that we actually incorporated into our recommendation. In erosion control and spill prevention, the State Department of Transportation has formal programs in place. It is recognized. And DOE has a stormwater manual. It has a number of the best management practices that were appropriate for incorporation in the building code. So we used that as a reference guide.

I should note that during this time a new transportation permit efficiency committee was created. And as part of that they're trying to give local jurisdictions some comfort in adopting something similar to DOT construction sites. So DOT actually came in last year and provided us with a contractor to take those construction specifications and write them into the erosion control/spill prevention guidelines. So those are in front of you today. I would just note on those – there are a couple of comments there, one of them, from the building official in Lacey. We had not heard from those concerns from Ecology or anyone else. Quite frankly his comment is taken care of in that he has a standard that says the erosion control plan has to comply with the DOE stormwater requirements. So that's actually been taken care of.

There are a number of comments from DOE. And I would note that there's a representative from DOE today. I've talked with her. They want to involve themselves in the scheduling. So hopefully we can move forward in July and do that. I would note that a lot of their comments were due to just a lack of understanding of the building code and how it functions. I think that a number of them actually would have taken you into land use and other issues. So we think that those things have been covered already and you are consistent with the DOE manual.

In fact I just want to read one piece quickly from the erosion control standard, which says that the plan shall be prepared in accordance with local and state erosion and stormwater guidance manuals and practices identified in the Washington State Department of Ecology Stormwater Manual. So we actually had tried to ensure that they were consistent. I think we have.

I had a very interesting phone call last Monday from probably the only person in the state of Washington who has installed somewhat over 50 rainwater harvesting systems. You have received testimony from the City of Seattle raising a number of concerns about the lack of flexibility in those proposed guidelines. I just want to let you know we've actually answered the majority of those concerns. There is a proposal here that goes step-by-step through all the changes, as well as the reasons for those changes being proposed. So we think we've taken care of the majority of the concerns that the City of Seattle had. And quite frankly we're pretty excited about trying this out because there's a fairly large project in Redmond that is interested in maybe doing some rainwater harvesting, and having a code in place would give them the ability to do so.

So with that, the final thing I want to do is just hand out what I think the motion I think would look like for adopting these things. Because once again this is not a statewide ordinance. This is merely forwarding a step to a research project before the Council.

So with that, I understand the time constraints. If you have any questions, I'd be happy to answer them.

### **John Hogan**

I'm John Hogan, City of Seattle. I don't believe that we've seen this revised version that Willy was referring to. I would suggest that you have another hearing later on. If there's a new document, you should really take testimony on it.

Our comments are that, specifically regarding the rainwater harvesting, this would benefit from greater stakeholder input, from people who are involved in design and construction assistance. The application should be broadened, as it only applies to roof water harvesting. It's cost-prohibitive. It will vary widely in application. It does not reflect current practices. Many proposed buildings would be out of compliance, including King County, the King Street Center and the City's Municipal Building. It's prescriptive instead of performance-based.

So those are our comments today. If there's something new, I'd be glad to look at that.

### **Karen Dinicola**

I'm Karen Dinicola, a Municipal Stormwater Engineer at the Department of Ecology.

I'm not here to give testimony. I'm here to answer any questions the Council might have about Ecology's comments or about our guidance for erosion and sediment control at construction sites.

We support the Council's work on a model ordinance for erosion and sediment control. We hope that we can work with you to update and revise the model ordinances to be more consistent with Ecology's Stormwater Manual. The manual was published last year and is an integral tool for Ecology's implementation of federal Clean Water Act requirements. Between 80 and 115 local jurisdictions will soon be required to adopt an erosion and sediment control ordinance to meet those federal requirements. We hope the model ordinance adopted by this Council can serve that purpose. We are willing to help your staff make the updates if your resources are limited.

Chris asked that DOE meet with the Council before July 12 to discuss comments received by the Endangered Species Act TAG. Karen said that will happen.

## **STAFF REPORT**

Tim noted the next meeting is a conference call on July 12. At that time a revised 2002 meeting schedule will be considered.

## **OTHER BUSINESS**

### **Motion #6:**

**Bill Misocky moved the Council direct the Building Code TAG to review the NFPA 5000 Building Code as soon as that code is available. Chris Endresen seconded the motion.**

Steve Nuttall said he thinks that code is now available, even though it still has to go through the Standards Council process. He said review should begin as quickly as possible. Dave Saunders asked if the review process will be the same as for other codes. Stan answered yes. Dave asked if other new codes will also be reviewed, if the review process will start over in January. Stan said the second question is not pertinent to the motion. Dave Saunders spoke against the motion, saying that if it fails he will propose another motion calling for review of all new editions of codes at the same time.

### **Amendment to Motion #6:**

**Dave Baker moved to table Motion #6 until the July 12 conference call. Dave Saunders seconded the motion. The motion was adopted, 6 aye to 3 nay.**

Lacking further business, Stan adjourned the meeting at 4:20 p.m.